

REMARKS

Claims 1-18 are currently pending in the present application, with Claims 16-18 being amended. Reconsideration and reexamination of the claims are respectfully requested,

The Examiner rejected Claims 1-18 under 35 U.S.C. 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

With respect to Claims 16-18, Applicants have amended the claim to more clearly recite the subject matter to be a computer-readable medium, which is well established to be patentable subject matter.

Applicants respectfully submit that Claims 1-15 are directed to the patentable subject matter of an apparatus with structural elements, wherein the term “section” as recited in the claims are directed to specific structures and, even when construed under the broadest reasonable construction, do not include purely software. For instance, the “acquisition section” as recited in Claim 1 refers to a physical component of the system that acquires original music content from a particular source. Applicants respectfully submit that software per se cannot acquire any information, including music content, unless it is operating as a part of a physical structure. Likewise, the replicated content generation section and the additional information generation section are both structural elements that perform certain functions. Accordingly, Applicants respectfully submit that the term “section” should not be construed to mean purely software, even under the broadest reasonable construction, and that Claims 1-15 are therefore directed to patentable subject matter of an article of manufacture under 35 U.S.C. 101.

The Examiner rejected Claims 1-18 as being anticipated under 35 U.S.C. 102(b) by Boykin (U.S. Patent Pub. No. 2001/0042048). This rejection is respectfully traversed.

The present invention is generally directed to an apparatus or program-encoded medium for facilitating the replication of musical content that is otherwise protected from unauthorized duplication. According to a preferred embodiment of the present invention, original music content is acquired from an original source, after which duplicate copies is replicated. During replication of the original musical content, additional information is also generated and appended to the replicated musical content. The generated additional information indicates that the replicated musical content is a duplicate copy, as well as indicates the source from which the duplicated copy is replicated.

Boykin does not contain any disclosure or suggestion of, while replicating original musical content, generating additional information that indicates the replicated copy to be a duplicate, and identify the source from which the duplicated copy is replicated.

Rather, Boykin discloses a musical distribution method by which a first user may purchase musical content and freely distribute, to a second user, the purchased musical content at a lower recording quality. The shared musical content includes the first user's identification information such that, should the second user choose to purchase the musical content in order to acquire a higher fidelity recording, the first user is awarded with referral points.

Boykin does not disclose replicating original musical content or generating additional information while replicating original musical content. Rather, Boykin discloses only appending ID information with the shared musical piece, which is *not* a replicate of the original musical content since it is of a lower quality than the original musical content. Furthermore, even if for the sake of argument the shared musical piece in Boykin can be considered a replicated copy, the ID information appended to the shared musical piece does not make up the "additional information" as recited in the claims in that the ID information does not identify a source from which the shared

musical content is replicated. Applicants note that the “source information identifying a replicated-from source of the replicated content” as recited in the claims identify a source from which the duplicate copy of music is replicated, not simply ID information. Accordingly, Applicants respectfully submit that Claims 1-18 are not anticipated by, nor obvious in view of, Boykin.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 393032045000. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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